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April 5, 2016

Via Certified Mail - Return Receipt Requested

Managing Agent
James Dean Construction, Incorporated
55 Mt. Adams Highway
Glenwood, Washington 98619

Re: Notice of Intent to File Suit under the Clean Water Act.

Dear Managing Agent:

This letter provides James Dean Construction, Incorporated (hereinafter "James Dean") with sixty days' notice of the Northwest Environmental Defense Center's intent to file a citizen lawsuit against it under Section 505 of the Clean Water Act, 33 U.S.C. §1365, for the Clean Water Act violations described in this letter. The Northwest Environmental Defense Center (hereinafter "NEDC") is a non-profit organization dedicated to protecting the natural environment of the Pacific Northwest. Kampmeier & Knutsen, PLLC represents NEDC in this matter and any response to this notice of intent to sue should be directed to us at the address below.

I. VIOLATIONS OF THE CLEAN WATER ACT.

Congress enacted the Clean Water Act in 1948 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985. To limit and control water pollution in Washington State, the Washington Department of Ecology authorized James Dean to discharge stormwater from October 1, 2010 to October 1, 2015 by granting James Dean coverage under Washington's Sand and Gravel General National Pollutant Discharge Elimination System Permit (Permit No. WAG 50-5104) (hereinafter "NPDES permit").

James Dean's NPDES permit authorizes James Dean to discharge stormwater to surface waters, provided the discharges are in conformance with all the requirements, limitations, and conditions set forth in the permit. Any other direct or indirect discharge to waters of the state is prohibited, including those discharges that are not in compliance with the terms and conditions of the NPDES permit. See

Condition G26 of the NPDES permit (Duty to Comply) (“The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action....”).

James Dean has violated and is violating its NPDES permit by discharging pollutants and stormwater from James Dean’s State Route 141 Quarry facility at or near 552 Highway 141, White Salmon, Washington (hereinafter the “facility”), to an unnamed tributary of White Salmon Creek, White Salmon Creek, the White Salmon River, the Columbia River, and/or other waters of the state, in violation of the terms and conditions of James Dean’s NPDES permit. This letter provides you with sixty days’ notice of NEDC’s intent to sue James Dean for the NPDES permit violations described below, for any similar violations that occur under the new Sand & Gravel General Permit that went into effect on April 1, 2016, and for any violations at any properties that are owned or operated by James Dean and contiguous or adjacent to the facility.

A. EFFLUENT LIMIT VIOLATIONS.

Condition S2 of James Dean’s NPDES permit requires James Dean to ensure that discharges of stormwater from the facility comply with the effluent limits listed in Table 3 of the NPDES permit. *See also* Condition G2 (“The discharge of any pollutants more frequently than, or at a concentration in excess of, that authorized by this permit constitutes a violation of the terms and conditions of this permit.”). Specifically, both the daily turbidity and average monthly turbidity of stormwater discharges from the facility must not exceed 50 NTU.

James Dean violated Condition S2 of its NPDES permit by discharging stormwater with daily turbidity in excess of the effluent limit in Condition S2 of its NPDES permit. These violations occurred on the following days and are ongoing:

<u>Date</u>	<u>Outfall 002 Monitoring Point</u>	<u>Daily Turbidity (NTU)</u>
4/22/2011	1	183
12/30/2011	1	240
12/30/2011	2	155
12/30/2011	7	240
3/31/2012	1	290
3/31/2012	2	155
4/2/2012	1	190
4/2/2012	2	155
11/20/2012	1	690
11/20/2012	2	550
12/5/2012	1	360
12/5/2012	2	240
9/30/2013	1	1459
9/30/2013	2	938
12/2/2013	1	917
12/3/2013	1	836

2/12/2014	1	849
2/12/2014	2	164
2/13/2014	1	413
2/13/2014	2	178
2/14/2014	1	393
2/14/2014	2	213
2/17/2014	1	387
2/17/2014	2	294
2/18/2014	1	296
2/18/2014	2	174
3/5/2014	1	342
3/5/2014	2	303
3/6/2014	1	365
3/6/2014	2	186
3/7/2014	1	345
3/7/2014	2	170
7/31/2014	2	66.4
12/22/2014	1	329
12/22/2014	2	260
1/19/2015	2	359
2/10/2015	2	440
5/29/2015	2	51.3
11/2/2015	1	266
11/18/2015	1	424
11/18/2015	2	266
12/8/2015	1	219
12/8/2015	2	191
12/11/2015	1	200
12/11/2015	2	184

Additionally, James Dean violated Condition S2 of its NPDES permit by discharging stormwater with an average monthly turbidity in excess of the effluent limit in Condition S2 of its NPDES permit. These violations occurred in the following months and are ongoing:

<u>Date</u>	<u>Outfall 002 Monitoring Point</u>	<u>Average Monthly Turbidity (NTU)</u>
April 2011	1	84
December 2011	1	240
December 2011	2	155
December 2011	7	240
March 2012	1	290
March 2012	2	155
April 2012	1	190

April 2012	2	155
November 2012	1	690
November 2012	2	550
December 2012	1	360
December 2012	2	158
September 2013	1	1459
September 2013	2	938
December 2013	1	876.5
February 2014	1	467.6
February 2014	2	204.6
March 2014	1	355
March 2014	2	178
December 2014	1	329
December 2014	2	260
January 2015	2	142
February 2015	2	165
November 2015	1	340
November 2015	2	266 (misreported as 133)
December 2015	1	210
December 2015	2	188

B. STORMWATER POLLUTION PREVENTION PLAN VIOLATIONS.

Condition S5.C.5.c and Condition S5.C.5.f of James Dean's NPDES permit require James Dean to include in its stormwater pollution prevention plan ("SWPPP") those best management practices that are necessary to control pollutants and comply with the stormwater discharge (effluent) limits in Conditions S2 and S3 of the permit. Condition S3.A of James Dean's NPDES permit requires James Dean to inspect, maintain, and repair all best management practices to ensure continued performance of their intended function. Condition G3 of James Dean's NPDES permit requires James Dean at all times to properly operate and maintain the facilities and systems of collection, treatment, and control that are installed or used by James Dean for pollution control. And Condition S5.C.3.a of James Dean's NPDES permit requires James Dean to review and modify its stormwater pollution prevention plan to implement additional or modified best management practices as soon as practicable whenever there is a violation of stormwater discharge (effluent) limits in Special Conditions S2 and S3 of the permit.

James Dean has violated and is violating Condition S5.C.5.c, Condition S5.C.5.f, Condition S3.A, Condition G3, and Condition S5.C.3.a of its NPDES permit by failing to include in its SWPPP best management practices that are necessary to control pollutants and to comply with the effluent limits in Conditions S2 and S3 of the permit, by failing to inspect, maintain, and repair all BMPs to ensure continued performance of their intended function, and by failing to review and modify its SWPPP to implement additional or modified BMPs after each effluent limit violation described in Section I.A. of this Notice of Intent to Sue. These violations have occurred each and every day since James Dean obtained NPDES permit coverage on October 1, 2010, and are ongoing.

C. FAILURE TO TAKE CORRECTIVE ACTIONS AND REPORT VIOLATIONS.

Condition S6.E of James Dean's NPDES permit requires James Dean to take certain actions if it unable to comply with any of the permit's terms, conditions or discharge limits for any reason. Specifically, James Dean must

1. Immediately take action to stop, contain, and cleanup unauthorized discharges or otherwise stop the violation, correct the problem and, if applicable, repeat sampling and analysis of any violation immediately.
2. Notify the Ecology Regional Sand and Gravel Permit Manager by phone or in person within 24 hours of when the James Dean becomes aware of the circumstances.
3. Submit a detailed written report to Ecology within 30 days, five days for upsets, spills and bypasses, unless requested earlier by Ecology. The report must describe the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of the re-sampling, and any other pertinent information. James Dean may not substitute data from re-sampling for ongoing permit monitoring required under Special Condition S2, S3 and S4 and must not be reported on the DMR.

James Dean violated Condition S6.E of its NPDES permit by failing to take the required corrective actions after each and every effluent limit violation described in Section I.A. of this Notice of Intent to Sue. These violations are ongoing.

D. VIOLATIONS FOR FAILURE TO MITIGATE.

Condition G30 of James Dean's NPDES permit requires James Dean to take all reasonable steps to minimize or prevent any discharge in violation of its NPDES permit that has a reasonable likelihood of adversely affecting human health or the environment. James Dean violated Condition G30 of its NPDES permit by failing to take all reasonable steps to minimize or prevent discharges that violate the permit and that may adversely affect the environment. These violations have occurred each and every day since James Dean obtained NPDES permit coverage on October 1, 2010, and are ongoing.

II. PARTY GIVING NOTICE.

The full name, address, and telephone number of the party giving notice is:

Northwest Environmental Defense Center
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219
(503) 768-6673

III. ATTORNEYS REPRESENTING NEDC.

The attorneys representing NEDC in this matter are:

Paul Kampmeier
Kampmeier & Knutsen, PLLC
615 Second Avenue, Suite 360
Seattle, Washington 98104
Telephone: (206) 223-4088 extension 4

Brian A. Knutsen
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833 S.E. Main Street
Mail Box No. 318; Suite 327
Portland, Oregon 97214
Telephone: (503) 841-6515

IV. CONCLUSION.

The NPDES permit violations described and alleged in this notice of intent to sue are ongoing and violate the Clean Water Act. At the conclusion of the 60-day notice period, NEDC intends to file a lawsuit against James Dean Construction, Incorporated under the citizen suit provisions of Section 505 of the Clean Water Act, 33 U.S.C. § 1365. Each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day. In addition to civil penalties, NEDC will seek injunctive relief to prevent further violations and such other relief as is permitted by law, including recovery of NEDC's costs, attorneys' fees, and expert witness fees. See 33 U.S.C. §§ 1365(a) and (d). Although the above-described violations reflect the information currently available to NEDC, NEDC intends to sue for all violations, including those yet to be uncovered, those committed after the date of this notice letter, and those that occur under the Sand & Gravel General Permit that went into effect on April 1, 2016.

During the 60-day notice period NEDC will be willing to discuss effective remedies for the violations described in this letter. If you wish to pursue settlement discussions in the absence of litigation, we suggest that you initiate discussions within 10 days of receiving this notice so the parties can meet and discuss effective remedies for the violations alleged herein. NEDC does not intend to delay the filing of a complaint if discussions are ongoing when the notice period ends.

Very truly yours,

Kampmeier & Knutsen, PLLC

By: 

Paul A. Kampmeier
Brian A. Knutsen

cc: Gina McCarthy, Administrator, U.S. Environmental Protection Agency
Dennis McLerran, Region 10 Administrator, U.S. Environmental Protection Agency
Maia Bellon, Director, Washington Department of Ecology
Mr. James H. Dean, Registered Agent for James Dean Construction, Incorporated, 55 Mt. Adams Highway, Glenwood, Washington 98619